

LAWS OF DELAWARE
VOLUME 83
CHAPTER 454
151st GENERAL ASSEMBLY
FORMERLY
HOUSE BILL NO. 474

AN ACT TO AMEND TITLES 10, 18, AND 24 OF THE DELAWARE CODE RELATING TO CONSTABLES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 10 of the Delaware Code by deleting Chapter 27 by making deletions as shown by strike through and insertions as shown by underline as follows:

~~CHAPTER 27. Constables~~

~~§ 2701. Appointment.~~

(a) ~~The Board of Examiners of Constables shall appoint and commission such numbers of constables as it deems necessary, from among those persons who have made application, to preserve the peace and good order of the State.~~

(b) ~~Upon expiration of a constable's term of office, the constable may request to the Board of Examiners that the commission as a constable be renewed. Approval for renewal shall be within the discretion of the Board of Examiners, and may be approved by it following such review.~~

(c) ~~The Delaware Capitol Police may appoint security officers.~~

(d) ~~The Delaware Capitol Police shall promulgate rules and regulations governing the qualifications and appointments of security officers with final approval of the Department of Safety and Homeland Security.~~

~~§ 2702. Board of Examiners.~~

(a) ~~The Board of Examiners shall consist of 5 individuals: The Superintendent of the Delaware State Police or the Superintendent's designee; the Director of Public Safety of the New Castle County Police or the Director's designee; the Attorney General or the Attorney General's designee; a representative from the Chiefs of Police Council; and a representative from the American Society of Industrial Security.~~

(b) ~~The Board of Examiners shall be responsible for reviewing applications for constables, and shall satisfy itself that the applicants meet all the established requirements. The Board of Examiners shall be responsible for establishing such other general qualifications of applicants as the Board deems necessary. The Board of Examiners may conduct such further inquiry and investigation as it deems proper in order to satisfy itself of the good character, competency and integrity of the applicants.~~

(c) ~~The Board of Examiners shall conduct an examination of an applicant's criminal history. A conviction for a felony in Delaware or elsewhere is an automatic grounds for disapproval of an application. The Board of Examiners shall review any misdemeanor convictions, and the Board may, in its discretion, disapprove of an application on the basis of such misdemeanor convictions.~~

(d) ~~The Board of Examiners may establish a reasonable application fee.~~

(e) ~~After the review process is completed, the Board of Examiners shall appoint and commission those applicants who have, as determined by the Board of Examiners, satisfied the requirements of this chapter and who are otherwise qualified to serve as constables.~~

~~§ 2703. Qualification and training.~~

(a) ~~A constable must be 21 years of age or older.~~

(b) ~~To be approved by the Board of Examiners, a constable applicant shall meet the minimum standards established by the Board and shall participate in such other training as the Board requires.~~

(c) ~~The Board of Examiners may require commissioned constables to receive such additional training or education as it deems necessary.~~

(d) ~~Constables appointed before the effective date of this law shall, during the remainder of their term, meet all requirements related to firearms training, as set forth in subsection (e) of this section, and all requirements related to additional training as set forth in subsection (c) of this section. In order for such a constable to be eligible for renewal of commission, the constable must meet the requirements set forth in subsection (b) of this section.~~

(e) ~~After appointment, the Board of Examiners shall determine, based on the constable's duties and employment, whether a constable shall be permitted to carry firearms while on duty as a constable. The Board of Examiners shall establish~~

standards and requirements of firearms training and training in the use of deadly force for those constables permitted by the Board to carry firearms while on duty. Any constable not so trained is prohibited from carrying a firearm while on duty.

~~(f) No constable shall be appointed for the benefit of any person, firm, corporation, civic association or governmental entity except upon a showing to the Board of Examiners that the proposed appointment will be in aid and relief of public law enforcement or police agencies and is necessary to protect life and property in circumstances where public law enforcement or police agencies are unable to assist.~~

~~(g) No person shall be commissioned as a constable unless that person submits, to the State Bureau of Identification, their name, Social Security number, age, race, sex, date of birth, height, weight, hair and eye color, address of legal residence and the provision of such other information as may be necessary to obtain a report of the person's entire criminal history record from the State Bureau of Identification and a report of the person's entire federal criminal history pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544.~~

~~(h) No sheriff or deputy sheriff shall be commissioned as a constable for the benefit of the sheriff's office or the government of a county unless a request has been made by resolution of the appropriate county council or Levy Court for such sheriff or deputy sheriff to be commissioned as a constable.~~

~~§ 2704. Term of office; discharge [For application of this section, see 79 Del. Laws, c. 370, § 2].~~

~~(a) The term of office for constables shall be 2 years. Those constables appointed prior to July 13, 1990, shall have their commissions reviewed by the Board of Examiners within 1 year of July 13, 1990, and after review may be discharged by the Board for cause prior to the expiration of their term. A constable, including one appointed before July 13, 1990, may be discharged by the Board for cause prior to the expiration of the term. The Board of Examiners shall establish procedures for notification to the appropriate persons and authorities of its discharge of a constable. For the purposes of this section, "cause" shall mean:~~

- ~~(1) Conviction of a crime involving moral turpitude;~~
- ~~(2) Conviction of a felony;~~
- ~~(3) A finding by the Board that an individual used fraud or deceit in obtaining a constable's commission; or~~
- ~~(4) Gross negligence or incompetence in performing a constable's duties.~~

~~(b) It shall be the duty of the constable to notify the Board of Examiners immediately if the constable's employment with the individual, firm, corporation, civic association or governmental entity at whose instance the constable was appointed is terminated. It shall also be the duty of the individual, firm, corporation, civic association or governmental entity to notify the Board of Examiners immediately if a constable in their employ is terminated, and such individual performed duties as a constable during and as part of the employment.~~

~~§ 2705. Powers and duties.~~

~~The constable shall:~~

- ~~(1) Protect life and property, and preserve peace and good order, while in the performance of the lawful duties of the employment;~~
- ~~(2) Exercise the same powers as peace officers and law enforcement officers, in order to protect life and property, while in the performance of the lawful duties of the employment;~~
- ~~(3) Execute all lawful orders, warrants and other process directed to the constable by any court or judge of this State; however, a constable shall only have such power and duty if the Board of Examiners, upon review, determine that the constable may exercise such duty or power;~~
- ~~(4) As part of duty, and in the exercise of the constable's lawful authority, notify the full service police agency which has primary law enforcement jurisdiction in every instance in which the constable makes a custodial detention, an arrest, a search of a person or place, or when the occurrence of a criminal act is reported to the constable. It shall be the responsibility of the full service police agency to undertake any necessary investigation and to comply with the reporting demands of the State Bureau of Identification.~~

~~For purposes of this paragraph, "full service police agency" shall mean a police force or other law enforcement agency of the State, county or municipality which is responsible for the prevention and detection of crime and the enforcement of the laws of this State and its governmental units.~~

~~§ 2706. Jurisdiction.~~

~~Except as otherwise provided by law or limited by the Board of Examiners, the jurisdiction of each constable appointed pursuant to this chapter will extend throughout the State.~~

~~§ 2707. Oath.~~

~~Upon appointment, the Board of Examiners shall issue to each constable a commission and the constable so appointed shall, before acting or performing duties as a constable, take and subscribe, before any officer authorized by the laws of this State to administer oaths, the oaths or affirmation prescribed by article XIV of the Constitution of Delaware.~~

~~§ 2708. Compensation.~~

~~The compensation of every constable shall be wholly paid by the individual, firm, corporation or civic association at whose instance the constable was appointed, unless the constable is employed by a governmental entity, in which case that governmental entity will be responsible for the constable's compensation.~~

~~§ 2709. Badges.~~

~~(a) Every person holding the office of constable shall have and display on proper demand a badge, approved by the Board of Examiners, with the word "constable" engraved thereon. A constable shall have and display such badge only while on duty and while in the performance of the lawful duties of employment. The name of the person, firm, corporation, civic association or governmental entity at whose instance the constable was appointed shall be plainly inscribed on such badge.~~

~~(b) Whoever violates this section shall be fined not more than \$100. The justices of the peace of the respective counties shall have jurisdiction of offenses under this section. A constable found violating this section shall notify the Board of Examiners in writing within 10 days. The Board of Examiners shall review the violation and determine whether the constable should be discharged. A failure to notify the Board of Examiners of a violation within 20 days shall be sufficient ground to revoke constable status.~~

~~§ 2710. Exclusion from coverage.~~

~~Constables appointed pursuant to this chapter or any other chapter are not covered by the provisions of Chapter 92 of Title 11, Law Enforcement Officers' Bill of Rights.~~

~~§ 2701 – § 2710 [Repealed.]~~

~~Section 2. Amend Title 24 of the Delaware Code by creating a new chapter by making deletions as shown by underline and insertions as shown by underline as follows:~~

CHAPTER 56. CONSTABLES.

§ 5601. Objectives.

The primary objective of this chapter is to regulate the commission of constables employed with various public and private entities within the State and to ensure that proficiency standards for commissioned constables are maintained. In meeting its objectives, the Constable Board of Examiners shall develop standards assuring professional competence, shall conduct and adjudicate at formal hearings, shall promulgate rules and regulations, and shall impose sanctions where necessary and appropriate. The Board shall comply with the Administrative Procedures Act under Chapter 101 of Title 29.

§ 5602. Definitions.

As used in this chapter:

(a) "Board" means the Constable Board of Examiners.

(b) "Commission" means authority issued from the Board empowering a person or persons named in an application to exercise jurisdiction, perform the duties, and exercise the office of a constable within this State.

(c) "Employer" means an individual, person, non-profit organization, the State, county, or a municipality.

(d) "Firearm" means as defined in §222 of Title 11.

(e) "Full service police agency" mean a police force or police agency of the State, county or municipality, that employs sworn police officers as defined in 11 Del. C. § 8401, and is responsible for the prevention and detection of crime and the enforcement of the laws of this State or other governmental units within this State.

(f) "Section" means the Professional Licensing Section of the Delaware State Police.

(g) "Superintendent" means the Superintendent of the Delaware State Police.

§ 5603. Constable Board of Examiners.

(a) There is created a Constable Board of Examiners which shall administer and enforce this chapter.

(b) The Board consists of seven members:

(1) The Superintendent of the Delaware State Police or the Superintendent's designee.

(2) The Director of Public Safety of the New Castle County Police or the Director's designee.

(3) The Attorney General or his or her designee.

(4) A representative from the Delaware Police Chiefs Council, or his or her designee.

(5) Three commissioned constables, one of which shall be employed by a higher education institution and one of which shall be employed by a healthcare institution. All three commissioned constables shall be appointed by the Governor.

(c) The Superintendent of the Delaware State Police, or the Superintendent's designee, shall serve as the Chair of the Board.

(d) The term of each member, excluding the Chair, whose term is indefinite, will be for 3 years.

(e) The Board must hold a minimum of 1 regularly scheduled meeting, each calendar year, and such other meetings as the Superintendent deems necessary or as requested by a majority of Board members.

(f) A Board member may be suspended or removed by a majority of the full Board for misfeasance, nonfeasance, or malfeasance. A Board member may appeal any suspension or removal to the Superior Court.

(g) Actions of the Board may be taken by majority vote of those present at Board meetings where a quorum has been established. A quorum is a majority of the Board. All voting shall be done in person at regular or special meetings of the Board.

§ 5604. Duties and responsibilities of the Board.

(a) The Board has the authority to:

(1) Promulgate, adopt and, from time to time, revise such rules, regulations, and standards not inconsistent with the law as may be necessary to enforce the provisions of this chapter.

(2) Review applications and grant commissions for constables upon review of an applicant's background, criminal history, work experience, and any other information the Board deems necessary.

(3) Conduct such further inquiry and investigation as the Board deems appropriate in order to satisfy itself of the good character, competency, and integrity of the applicants.

(4) Appoint and commission those applicants who have, as determined by the Board, satisfied the requirements of this chapter and its rules and regulations, and who are otherwise qualified to serve as constables.

(5) Establish minimum qualifications for applicants by rule or regulation, and yearly continuing legal and in-service training requirements for commissioned constables.

(6) Deny an applicant a commission, or suspend or revoke the commission of a constable, where the applicant or constable fails to meet required standards or violates this chapter, or violates a rule or regulation promulgated under this chapter.

(7) Promulgate rules and regulations for commissioned constables to carry and use, while on duty, batons, night sticks, chemical spray, conducted electrical weapons, canines, and firearms.

(8) Establish standards and requirements for firearms training and training in the use of force, including the use of deadly force, for constables applying to the Board to carry firearms while on duty. Constables who fail to meet the standards for carrying a firearm or fail to successfully complete firearms training are prohibited from carrying a firearm while on duty.

(9) Grant or deny renewal applications. The Board has the authority to deny renewal of a Constable's commission where the constable fails to meet the required standards of this chapter or violates a provision of this chapter, or any rule or regulation promulgated under this chapter.

(10) Conduct hearings for denial, suspension or revocation of a commission.

(11) Issue subpoenas to compel the attendance of witnesses, order discovery for the production of documents, and administer oaths to persons testifying at hearings.

(12) Establish reasonable application and renewal fees that equate with all costs necessary to defray the expenses of the Board.

§ 5605. Duties of the Professional Licensing Section.

(a) The Professional Licensing Section shall do the following:

(1) Keep a register of all constable commission applications, including approvals and denials thereof, and of all renewal applications.

(2) Be responsible for recording and maintaining the minutes of all Board meetings.

(3) Keep a complete record relating to Board meetings, including but not limited to, rosters, amendments to the Board's rules and regulations, investigations, fees, hearings, and such other matters as the Board determines.

(b) The Professional Licensing Section may suspend, revoke, or issue an emergency suspension, of a commissioned constable who has been arrested, when the arrest may result in a felony or misdemeanor conviction, or where the commissioned constable has violated this chapter or any rule or regulation promulgated under this chapter.

§ 5606. Commissions.

(a) All applicants must provide the Board with proof of employment with an employer and the required documentation, from the employer, as required under § 5607 of this title, prior to being commissioned or recommissioned as a constable.

(1) All commissioned constables must notify the Board immediately if their employment with the employer at the time of their original application or their renewal application is terminated.

(2) All employers that employ commissioned constables must notify the Board immediately if a constable in their employ is terminated.

(b) The Board shall have the authority to deny a commission for any constable whose employer fails to show that the proposed commission will be in aid and relief of full service police agencies and is necessary to protect life and property in circumstances where full service police agencies are unable to assist.

(c) No current sworn or civilian personnel employed by a Delaware law enforcement organization, as defined by the Council on Police Training, or current sworn or civilian member of a law enforcement organization in any other state or federal jurisdiction shall be commissioned as a constable.

(d) No sheriff or deputy sheriff shall be commissioned as a constable for the benefit of the sheriff's office or the government of a county unless a request has been made by resolution of the appropriate county council or Levy Court.

(e) All applicants shall provide the State Bureau of Identification with their names, weight, hair color, eye color, current address, legal residence, and any other information necessary for the Bureau to obtain a report of an applicant's entire state criminal history and entire federal criminal history pursuant to the Federal Bureau of Investigation appropriation of Title 11 of Public Law 92-544.

(f) Upon appointment as a constable, the Professional Licensing Section shall issue commissioned constables a commission certificate and identification card. No commission certificate or identification card issued pursuant to this chapter shall be transferable.

(g) The term of office for all constables shall be 2 years from the date the constable was commissioned.

(h) Upon expiration of a constable's term of office, the constable may request that the Board renew their commission. Approval for renewal shall be within the discretion of the Board.

§ 5607. Qualifications and training.

(a) All applicants and commissioned constables must meet all requirements of this chapter and all rules and regulations promulgated by the Board.

(b) Anyone who wishes to be commissioned under this chapter, must meet and maintain the following requirements:

(1) Must be a minimum of 21 years old.

(2) Must not have been convicted of a felony.

(3) Must not have been convicted of any misdemeanor within the last 7 years prior to the date of application, which involves a theft-related offense, drug offense, or offense involving moral turpitude, or any misdemeanor that, in the discretion of the Board, bears such a relationship to the performance of a commissioned constable as to disqualify the individual from receiving a commission; and,

a. The individual has had no more than 2 misdemeanor convictions during his or her lifetime and

b. The misdemeanor convictions did not occur during the individual's employment as a constable regulated under this chapter.

(4) Must not have been adjudicated delinquent for conduct as a juvenile, which if committed as adult would have constituted a felony.

(5) Must not have been dishonorably discharged if the individual is a veteran of any branch of the armed forces.

(6) May not be a current sworn or civilian employee of any Delaware law enforcement organization, as defined by the Council on Police Training, or current sworn or civilian employee of a law enforcement organization in any other state or federal jurisdiction.

(7) Must be fingerprinted and provide the required identification information and personal description to the State Bureau of Investigation for purposes of the Bureau obtaining a complete state and federal criminal background report.

(8) Must provide written documentation, at the time of original application or renewal, from an employer, stating that the applicant is employed or has been offered employment with the employer, and the employer requires a commissioned constable to protect life and property in circumstances where public law enforcement can not assist.

(c) Commissioned constables shall receive such additional training or in-service education as required by the Board.

§ 5608. Oath.

Upon appointment, the Board shall issue to each constable a commission and the constable so appointed shall, before acting or performing duties as a constable, take and subscribe, before any officer authorized by the laws of this State to administer oaths, the oath or affirmation prescribed by Article XIV, Section 1, of the Constitution of Delaware. The oath or affirmation shall not be recorded at the Recorder of Deeds.

§ 5609. Powers and duties of constables.

(a) A commissioned constable shall:

(1) Work within the lawful duties of his or her employment to protect life and property, and preserve peace and good order.

(2) Exercise the same powers as peace officers and law-enforcement officers, in order to protect life and property, while in the performance of the lawful duties of employment.

(3) Execute all lawful orders, warrants and other processes directed to the constable by any court or judge of this State.

(4) Notify the full service police agency, having primary jurisdiction over the location under a constable's scope of employment, upon the constable's exercise of his lawful authority to make an arrest in the performance of his duties. It shall be the responsibility of the full service police agency to undertake any necessary investigation and to comply with the reporting demands of the State Bureau of Identification.

§ 5610. Badges.

(a) A person who holds the office of constable shall have and display on proper demand a badge, approved by the Board, with the word "constable" engraved thereon. A constable may have and display such badge only while on duty and while in the performance of the lawful duties of employment. The name of the person, firm, corporation, civic association, or governmental entity employing the constable shall be plainly inscribed on such badge. Only State agencies may use the State Seal on any constable uniform, equipment, or badge.

§ 5611. Jurisdiction.

Except as otherwise provided by law or limited by the Board the jurisdiction of each constable, commissioned under this chapter, shall extend throughout the State.

§ 5612. Disciplinary proceedings; appeal.

(a) Subject to the provisions of this chapter and the rules and regulations promulgated by the Board, the Board may impose any of the following sanctions set forth in subsection (b) of this section if a finding has been made by the Board that a constable has engaged, or is engaging, in any of the following activities:

(1) Working as a constable without a commission.

(2) Failing to maintain training and in-service requirements.

(3) Has a felony or prohibited misdemeanor arrest or conviction under §5607 of this title.

(4) Failing to notify the Board of termination of employment.

(5) Working outside the lawful duties of employment as a constable.

(6) Submitting false or fraudulent information on any application for commission.

(7) Failing to surrender a revoked identification card or badge.

(8) Failing to carry or display a Board approved constable badge during the scope of employment.

(9) Violating any provision of this chapter or any rule or regulation promulgated by the Board.

(b) Disciplinary Sanctions - The Board may issue the following sanctions for violations under subsection (a) of this section:

(1) Permanent revocation of commission or identification card.

(2) Suspension of a commission.

(3) Issuance of a written reprimand.

(4) Denial of the issuance of a commission or identification card.

(5) Denial of an application to renew a commission or identification card.

(6) Issuance of an administrative penalty of no more than \$100.00. The failure of a constable to pay the administrative penalty within 30 days after the penalty has been assessed shall be grounds for suspension or revocation of the constable's commission.

(7) Any other disciplinary sanction permitted by law.

(c) Procedure.

(1) After receipt of written notice from the Section of the Board's proposal to deny, suspend or revoke a commission or identification card, the constable shall be afforded a hearing before the Board.

(2) The constable shall submit in writing, within 30 days from the date of receipt of the written notice of a proposal to deny, suspend or revoke, a request for a hearing before the Board.

(3) A hearing panel consisting of 3 members of the Board shall be convened to hear the appeal. The panel shall be comprised of the Chair of the Board or the Chair's designee, a Board member from a police agency, and a Board member from a constable agency.

(4) The constable shall appear in person and may be represented by counsel. The constable may present evidence, cross-examine witnesses, and obtain the issuance of subpoenas under subsection (d) of this section. The Delaware Rules of Evidence will apply to the presentation of evidence. A record shall be kept of all public hearings, a transcript of which shall be provided, at cost, upon request. All decisions shall be by a majority of the members of the hearing panel.

(d) The Board may issue subpoenas, sua sponte, or at the request of the constable, and order discovery in aid of investigations and hearings under this chapter. Subpoenas shall be signed by the Chair of the Board and may be served by any sheriff, deputy sheriff, constable or any member of the Board. Proof of receipt of the subpoena shall be made to the Board. Issuance of subpoenas and all discovery shall be subject to the same limitations as would apply in a civil action in the Superior Court. Provided, however, that subpoenas and discovery, in aid of investigation, are first to be reviewed by the Attorney General to determine whether there is reason to believe that there has been a violation of this chapter.

§ 5613. Judicial Review.

(a) A constable aggrieved by a decision of the Board under § 5612 of this title may obtain a review of such decision by filing an appeal with the Superior Court no later than 30 days after the Board's decision.

(b) Any party to the proceeding before the Board's hearing panel may intervene in the Superior Court appeal process.

(c) No objections not raised before the Board's hearing panel shall be considered by the Superior Court, unless the failure or neglect to raise such objections is excused because of extraordinary circumstances or where the interests of justice so require.

(d) An appeal to the Superior Court shall be an appeal on the record.

§ 5614. Exclusion from coverage.

Constables appointed pursuant to this chapter are not covered by the provisions of the Law Enforcement Officers' Bill of Rights under Chapter 92 of Title 11.

Section 3. Constables commissioned before the effective date of this chapter will remain commissioned during the remainder of their term, however those constables whose commission includes carry and use of a firearm must meet all requirements related to firearms training under §5604(8) of this title. Once a commission expires, the constable must meet all requirements set forth in §5607 of this chapter for renewal of commission.

Section 4. Amend Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

CHAPTER 66. Line-of-Duty Death Benefits

§ 6601. Definitions [For application of this section, see 79 Del. Laws, c. 434, § 3].

As used in this chapter:

w. Constables commissioned pursuant to ~~§ 2701 et seq. of Title 10.~~ Chapter 56 of Title 24.

Approved October 10, 2022